

Award No. 19065
Docket No. CL-16860

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6189) that:

1. Carrier violated the Clerk's Rules Agreement when it permitted the Agent at Lewistown, Montana to call crews on the rest day of the occupant of the clerical position regularly assigned the crew calling work.

2. Carrier shall now be required to compensate employe D. Matthews for 5 hrs. 20 min. at the overtime rate of Yard Clerk Position No. 77950 for Sunday, January 16, 1966.

EMPLOYEES' STATEMENT OF FACTS: Employe D. Matthews is the regularly assigned occupant of Yard Clerk Position No. 77950 at Lewistown, Montana, with hours of assignment from 9:00 P. M. to 5:00 A. M., Monday through Friday, with rest days of Saturday and Sunday.

Yard Clerk Position 77950 is not relieved on Saturday; however, relief is assigned thereto on Sunday.

Among other regularly assigned duties of Position 77950 are those of calling crews, and the calling of crews, as evidenced by statements submitted as Employees' Exhibit "A," is work which has been assigned to and performed by Clerks throughout the years.

On Sunday, January 16, 1966, it was necessary to deadhead a Conductor from Lewistown to Harlowton, Montana to relieve Conductor L. A. Gomell on Train 163-164. In lieu of assigning the work of calling a conductor for that deadhead trip to a clerical employe who regularly performs crew calling work throughout the week, Agent A. M. Peterson, who normally does not work on Sundays, at about 9:30 A. M. personally called Conductor A. N. Syverson to deadhead to Harlowton to relieve Conductor Gomell on Train 163-164. (See copy of Conductor Syverson's statement of March 21, 1966

November 16, 1923	Agent Ticket Day Operator
December 1, 1927	Agent Ticket Day Operator
May 1, 1939	Agent First Operator Second Operator
April 1, 1947	Agent First Operator Second Operator
September 1, 1949	Agent First Operator Second Operator

The first Agreement with the Clerks' Organization on this property became effective January 1, 1920 or, in other words, almost 17 years after the first Telegraphers' Agreement and 6 years after Lewistown first appeared in the Telegraphers' Agreement revised effective September 1, 1914, and has subsequently been revised on February 1, 1922, November 1, 1929, January 16, 1946 and September 1, 1949.

Yard Clerk Position No. 77590 was established at Lewistown, Montana for the express purpose of assisting the Agent and/or other employes within the scope and application of the Telegraphers' Agreement in the performance of that part of the station work which, because of the volume involved, the Agent and/or operators were and/or are unable to perform.

The instant claim involves the "* * * calling of crews * * *" which by the claim the employes have presented, they are contending is work exclusive to Yard Clerk Position No. 77950 and/or other clerical positions located at Lewistown, but which, in fact, is not work exclusive to Yard Clerk Position No. 77950 or any other clerical position, either at Lewistown or throughout the Carrier's entire System, nor is the work of "* * * calling of crews * * *" exclusive to Claimant Matthews or any other employe under the Scope of the Clerks' Agreement, either at Lewistown or throughout the Carrier's entire System as the Carrier will establish in its "Position."

There is attached hereto as Carrier's Exhibit "A," copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of June 8, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: It is concluded from the record that on Sunday, January 16, 1966, the rest day of Claimant D. Matthews, the Agent at Lewistown, Montana, an employe outside the scope and application of the Clerks' Agreement, personally called Conductor A. N. Syverson to deadhead to Harlowton to relieve Conductor Gomell on Train 163-164.

Claim was handled and filed on the property alleging that this act on the part of the Agent violated the Organization's Scope Rule. We find that

the Scope Rule is "general" in nature and that the act of calling Conductor Syverson, in and of itself, did not violate the Clerks' Scope Rule. We are urged to follow recent Award 19039 involving a rest day dispute under the same Agreement. In the dispute in that Award arguments similar to the arguments raised by both parties in the instant dispute were treated with. In addition, the Organization cited Rule 28—WORK ON UNASSIGNED DAYS. The record in this case is barren of any reference to Rule 28 and there is no indication that Rule 28 was discussed on the property.

Accordingly, we are unable to follow Award 19039 in the instant dispute.

We must, therefore, deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.